

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on June 30, 2005. Claims 1-5, 7-11, 13-16 and 18-35 are pending in this application. In the Office Action, 1-5, 7-11, 13-16, 18-20, 25, 28-29, 31-32 and 34-35 are rejected under 35 U.S.C. §102(b), Claims 21-24, 27, 30 and 33, are rejected under 35 U.S.C. §103 and Claims 1-5, 7-11, 13-16 and 18-20 are provisionally rejected under obviousness-type double patenting. In response Claims 1, 7, 13, 18 and 20 have been amended and Claim 36 has been added. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-5, 7-11, 13-16, 18-20, 25, 28-29, 31-32 and 34-35 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,743,460 to Gellman et al. ("*Gellman*") in view of U.S. Patent No. 5,407,661 to Simone et al. ("*Simone*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants respectfully submit that the anticipation rejection with respect to Claims 1-5, 7-11, 13-16, 18-20, 25, 28-29, 31-32 and 34-35 is improper because a rejection under 35 U.S.C. §102(b) must come from a single prior art reference. In this case, the Patent Office is using *Gellman* and *Simone* in combination to improperly reject the claims under 35 U.S.C. §102(b).

In addition, contrary to the present claims, *Gellman* fails to disclose or suggest any dried pet food having abrasive agents or dental care agents. Applicants respectfully disagree with the Patent Office's assertion that the amendment does not appear to be the actual crux of that which Applicants consider their invention. In actuality, the test under 35 U.S.C. §102(b) is whether a single prior art reference discloses every element of the claimed invention without regard to what particular elements are novel or not. *Gellman* does not pass this test as the Patent Office admits. See, Office Action, page 3.

Moreover, Applicants have amended independent Claims 1, 7, 13, 18 and 20 recite, in part, a dried pet food comprising an agent selected from the group consisting of abrasive agents, dental care agents and combinations thereof, wherein the dried pet food comprises a moisture content of less than about 10% by weight. The amendment as discussed above is supported in the specification, for example, at page 8, lines 13-16. Contrary to the present claims, Applicants

respectfully submit that all of the claimed elements are not taught or suggested by the cited references either alone or in combination.

Gellman fails to disclose or suggest a dried pet food having a moisture content of less than about 10% by weight as required by the present claims. Indeed, *Gellman* teaches away from such a moisture content by stating “[m]ore generally, useful biscuit doughs can contain about 15 to about 35 percent by weight of water, about 0.5 to about 10 percent by weight of fat and about 5 to about 20 percent by weight of sugar.” (emphasis added.) See, *Gellman*, column 8, lines 3-7.

Similarly, *Simone* fails to disclose or suggest a dried pet food having a moisture content of less than about 10% by weight. In fact, *Simone* requires a pet food having a higher moisture content, which teaches away from the present claims. For example, *Simone* states “[t]o impart flexibility to the chew product, it is advantageous to adjust the moisture content of the chew product so that the final product contains water at a concentration equal to or greater than 12% by weight and preferably 16 to 35% by weight.” (emphasis added.) See, *Simone*, column 5, lines 5-10.

For the reasons discussed above, the combination of *Gellman* in view of *Simone* does not teach, suggest, or even disclose all of the elements of the present claims, and thus, fails to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the rejection of Claims 1-5, 7-11, 13-16, 18-20, 25, 28-29, 31-32 and 34-35 under 35 U.S.C. §102(b) be withdrawn.

Claims 22-23 are rejected under 35 U.S.C. §103 as being unpatentable over *Gellman* in view of *Simone* and further in view of U.S. Patent No. 5,887,749 to Schommer et al. (“*Schommer*”). Claims 21, 24, 27, 30 and 33 are rejected under 35 U.S.C. §103 as being unpatentable over *Gellman* in view *Simone* and further in view of U.S. Patent No. 6,455,083 to Wang et al. (“*Wang*”). Applicants respectfully submit that the patentability of Claims 1, 7, 13, 18 and 20 renders moot the obviousness rejections of Claims 21-24, 27, 30 and 33. In this regard, the cited art fails to teach or suggest the elements of Claims 21-24, 27, 30 in combination with the novel elements of Claims 1, 7, 13, 18 and 20.

Claims 1-5, 7-11, 13-16 and 18-20 have also been rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-9 of U.S. Patent No. 6,841,178 and

provisionally rejected over Claims 1-33 of co-pending U.S. Patent Application 10/037,941. Applicants respectfully submit that the current amendment to independent Claims 1, 7, 13, 18 and 20 disclose novel subject matter with respect to U.S. Patent No. 6,841,178 and U.S. Patent Application Number 10/037,941.

Accordingly, Applicants respectfully request that the rejections of Claims 1-5, 7-11, 13-16 and 18-20 under obviousness-type double patenting be withdrawn.

Claim 26 was found to be free of the prior art of record. See, Office Action, page 6. In response, new Claim 36 has been added and effectively represents the subject matter as defined in Claim 1 and 26. Therefore, Claim 36 should be allowable.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157

Dated: September 30, 2005